IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No. 1635 of 2007.

Indarchand s/o Ramkumar Agrawal ..vs. Anurag N. Agrawal and others.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Atul Pande, Advocate for petitioner
Mr. V. R. Mundra , Advcoate for respondent no.1.
Mr. Patel, Assistant Government Pleader for Respondent Nos. 2 & 3.

CORAM : R.V.MORE, J.
DATED : 26/11/2007

Heard learned counsel for the parties.

1. This is a tenant's writ petition challenging the order granting permission to the respondent-landlord to terminate the petitioner's tenancy under clause 13 (3) (v) of the C. P. & Berar Letting Houses and Rent Control Order 1949 (heareinafter referred as to the Rent Control Order)

2. The grievance of the petitioner is that the respondents by filing application before the Rent Controller sought permission to terminate the petitioner's tenancy under Clause 13(3)(ii)(vi) of the Rent Control Order and therefore, the Rent Controller granted permission to terminate tenancy under clause

13 (3) (vi) only. However, the Additional Collector committed error by granting permission under clause 13(3)(v) of the said Act in appeal which required to be corrected in my jurisdiction under Article 226 & 227 of the Constitution of India.

3. Per contra, Mr. Mundra, learned counsel for the respondents pointed out pleading in para No.5 of his application which reads as follows:-

> 'That, the further non-applicant has acquired alternative accommodation and owns three houses at Ganj Ward Chandani Chowk Gondia and the non-applicants in possession of these three premises. That, these premises is in possession of non-applicant is also situated in the market area and non-applicant can easily shift his present business to these property. Hence, the applicant is also entitled for permission under Order 13(3)(ii)(vi), of C.P. & Berar Rent Control Order."

4. The respondents contended that there are pleadings and therefore, mere omission in prayer clause to mention clause (v) of of Section 13(3) does not dis-entitle the respondents from asking permission on this ground, especially when, evidence was

already adduced by the parties in this regard. The petitioner, therefore, was put on notice and no prejudice is caused, by the order under which permission is granted under clause (v) of Section 13(3).

5. I do not find merit in petitioner's contention that the permission is granted under Clause 13(3)(v) of the Rent Control Order without there being pleadings. Para 5 of respondents application do show that permission was sought on the ground that the petitioner has acquired suitable alternative accommodation also. Merely only because of omission in the prayer clause in mentioning clause 13(3)(v) will not dis-entitle the respondents from asking permission to terminate tenancy, on this ground, especially when, the parties have led the evidence on this ground and no prejudice shown to have been caused to the petitioner.

6. The learned Additional Collector,

observed in para 24 of his order that the petitioner owns house at Chandni Chowk, Gondia admeasuring about 2500 square feet. It was further observed that the said house is in exclusive possession of the petitioner and there are 7 to 8 shops in the suit house, out of which 5 to 6 shops are vacant, which are in occupation of the petitioner and the petitioner can very-well shift and start his business in these vacant shops. The learned Additional Collector recorded these findings on the basis of admission of the petitioner in cross-examination at page 36 of the compilation of the petition. Since, the finding of fact is recorded by the last fact finding Court that the petitioner in possession of alternative accommodation viz. 5 to 6 vacant shops in Chandani Chowk, Gondia, where he can shift and start his business, I am not inclined to interfere in this finding in my jurisdiction under Article 226 & 227 of the Constitution of

India.

7. In view of above observation, I do not find any merit in the petition and the same is, therefore dismissed with no order as to costs.

JUDGE.

jsa